

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

KRAFT FOODS GLOBAL, INC., THE KELLOGG COMPANY, GENERAL MILLS, INC., and NESTLÉ USA, INC.,)	
)	
Plaintiffs,)	No. 1:11-cv-08808
)	
v.)	Judge Steven C. Seeger
)	
UNITED EGG PRODUCERS, INC.,)	
UNITED STATES EGG MARKETERS, INC., CAL-MAINE FOODS, INC., and)	
ROSE ACRE FARMS, INC.)	
)	
Defendants.)	

**MOTION TO PRECLUDE COMMENTARY ON
CORPORATE REPRESENTATIVES IN CLOSING ARGUMENTS**

In prior trials, defense counsel has argued that—while representatives of the defendants “sat here every day, every day of the trial, just like you [the jury] did”—representatives of certain plaintiffs “didn’t show up.” DAP Tr. 12/10/19 at 142-43.

This is improper argument. As another court in this district court has explained, in the context of granting a motion to preclude commentary on the presence or absence of a corporate representative at trial, this fact is irrelevant: “[A] [party’s] representative’s absence or presence at trial” does not “ha[ve] any tendency to make a fact more or less probable than it otherwise would be, or how that fact would be of consequence in determining the action.” *In re Testosterone Replacement Therapy Products Liability Litig.*, No. 15 C 3941, 2017 WL 5029601 (N.D. Ill., Nov. 3, 2017). Other courts agree. See *In re Nat’l Prescription Opiate Litig.*, No. 1:17-md-2804, 2020 WL 6450290, at *12 (N.D. Ohio Nov. 3, 2020) (holding that presence or absence of corporate representatives at trial was “irrelevant” and precluding comment on the topic); *Riley v. Ford Motor*

Co., No. 2:09-CV-148, 2011 WL 3273592, at *3 (S.D. Miss., July 29, 2011) (excluding reference to defendants' corporate representatives, finding that “[t]he presence, absence, or identity of Defendants' corporate representatives is wholly irrelevant to Plaintiffs' claims”); *Woulard v. Greenwood Motor Lines, Inc.*, No. 1:17cv231, 2019 WL 3318467, at *6 (S.D. Miss., Feb. 4, 2019) (“when a plaintiff has sought to comment on a corporate representative's failure to attend trial, this Court has previously determined that such comments may improperly inflame the jury by suggesting that the corporate defendant does not care about the case.”).

Plaintiffs ask this Court to follow suit.

November 16, 2023

Respectfully submitted,

Counsel for Plaintiffs Kraft Foods Global, Inc., General Mills, Inc., Nestlè USA, Inc. and The Kellogg Company

/s/ Brandon D. Fox

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